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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

CHARLES GARDYN,
Plaintiff and Appellant,

v.

CITY OF BENICIA,
Defendant and Respondent.

A103434

(Solano County
Super. Ct. No. FCS020508)

On June 4, 2002, the City of Benicia City Council adopted a resolution revoking Charles Gardyn's business license for Go Fish, Inc., doing business as Sundowner Card Casino (casino). Gardyn appeals from the denial of a petition for writ of mandate seeking to set aside the revocation. He contends: (1) the City of Benicia (the city) did not have the authority to revoke his business license, as distinguished from his separate card room license; (2) the procedures used by the city to suspend and later revoke his business license deprived him of due process; and (3) the city abused its discretion in revoking his license as a remedy for the allegedly illegal conduct occurring at the casino. We affirm.

Factual and Procedural History

Since 1993, Gardyn has owned and operated the casino and the adjacent Sundowner Bar and Grill (the bar), both located at 1401 Fifth Street in Benicia, California. While both establishments have separate entrances, there is also an internal entry between the two that is accessible when the casino is open, to enable casino customers to use the restrooms that are located in the bar. Since 1997, Gardyn has held

separate business licenses for the bar and for the casino, as well as an additional card room license for the casino.

On January 4, 2002, the city, through its Finance Director Allan Nadritch, summarily suspended Gardyn's business license for the casino on the ground that illegal drug transactions were being conducted at the casino. After suspending the license, Nadritch held two hearings at which Gardyn was given the opportunity to show why his license should not be revoked. Gardyn objected that he was being denied due process because, among other things, he had not been given proper notice of the allegations against him. Shortly after the second hearing, Nadritch revoked Gardyn's license on the grounds of illegal drug activity and also violations of California gaming laws (Pen. Code § 330).

Gardyn appealed the revocation to the city council. Prior to the hearing, Gardyn received additional notice of the allegations against him and copies of redacted police reports with respect to the allegations. A hearing was held before the city council at which Gardyn, various police officers, and members of the public testified. At the conclusion of the hearing, the council members voted to affirm the revocation of Gardyn's license. The council's resolution is based on findings that "evidence and testimony has been presented to the city council by members of the Benicia Police that certain illegal activities were taking place at 1401 East Fifth Street in the Sundowner Card Casino that include sale of illegal controlled substances, and attempted sale of controlled substances in violation of State Health and Safety Code section 11379, and illegal gaming activities in violation of State Penal Code section 330."

Gardyn filed a petition for a writ of mandate in superior court seeking to set aside the revocation. The court denied the petition, concluding that "[t]he evidence supports the findings that petitioner's business was being operated in a disorderly fashion Specifically, after reviewing the evidence as a whole, it appears that petitioner's business was a well-known place where one could readily obtain controlled substances." The court also found that "all of the written notices and reports provided to petitioner between January 2002 and the date of the city council hearing on June 4, 2002, taken as a whole,

did not deprive petitioner of due process” and that “the procedures used and substantive evidence adduced at the hearing provided a basis, using the preponderance of the evidence standard, for the revocation of the business license.” Gardyn filed a timely notice of appeal.¹

Discussion

“ ‘The right to practice one’s profession is a fundamental vested right and if a person’s license to practice that profession is revoked by an administrative agency, when a petition for a writ of mandate is brought for restoration of the license, the trial court must apply its independent judgment to its review of the facts underlying the administrative decision. [Citations.] [¶] . . . [¶] Under the independent judgment rule, the trial court must weigh the evidence and make its own determination as to whether the administrative findings should be sustained. When an appeal is taken from the trial court’s determination, it is given the same effect as any other judgment after trial rendered by the court: the only question is whether the *trial court’s* (not the administrative agency’s) findings are supported by substantial evidence. [Citation.] Conflicts in the evidence must be resolved in favor of the judgment and where two or more inferences can be reasonably drawn from the facts, the reviewing court must accept the inferences deduced by the trial court.’ [Citation.] However, ‘. . . the trial court’s legal conclusions are open to our examination to determine if errors of law were

¹ Gardyn has also filed a motion requesting that we take judicial notice of a judgment entered following a jury verdict acquitting Gardyn of the alleged gaming violations, and a subsequent order issued by the trial court finding Gardyn factually innocent of those charges. Both the judgment and order were filed after the writ petition was denied in this case. Matters occurring after entry of judgment are generally not reviewable, and we see no reason to deviate from this long-standing rule in the present case. (*People’s Home Savings Bank v. Sadler* (1905) 1 Cal.App. 189, 193.) This new evidence, even if considered, would not require reversal of the trial court judgment. As discussed in the body of this opinion, the illegal drug activity provided an alternative basis for the revocation of Gardyn’s business license. The vast majority of the evidence at the city council hearing was devoted to drug activity rather than illegal gaming activity, and this evidence alone supports the revocation of Gardyn’s license. Therefore, the motion to take judicial notice is denied. For the same reason, we deny the city’s motion to augment the record on appeal with a letter written by the Gaming Control Commission, dated June 10, 2004, informing Gardyn that his state gaming license has been denied.

committed.’ ” (*Lam v. Bureau of Security and Investigative Services* (1995) 34 Cal.App.4th 29, 36.)

1. *The suspension and subsequent revocation of Gardyn’s business license under Benicia Municipal Code chapter 5.04 was proper.*

Section 5.04.190, contained within chapter 5.04 of the Benicia Municipal Code,² requires all persons doing business in the city to maintain a current business license, and authorizes the city, for a fee, to issue a business license to persons operating a card room. Section 5.08.030, part of chapter 5.08, further requires every card room operating in the city to obtain a separate card room license under the procedures set forth in chapter 5.08. Gardyn contends the city did not have the authority to revoke his business license based on the allegedly illegal activity occurring at the casino because the license issued under chapter 5.04 is revenue raising and not regulatory. He also argues that the city was required to use the procedures for revoking a card room license set forth in chapter 5.08 because those procedures are more specific than the procedures contained in chapter 5.04. The trial court concluded the city had both regulatory and revenue raising authority under chapter 5.04, and that there was nothing improper about its exercise of authority under chapter 5.04 rather than under chapter 5.08. We agree.

Whether the statute is regulatory or revenue raising is irrelevant. Government Code section 37101 authorizes the city to license businesses for regulatory and revenue raising purposes. A city’s regulatory provisions are subject to preemption by state law, but its revenue raising provisions are not. (Cal. Const., art. XI, § 6; *City and County of San Francisco v. Boss* (1948) 83 Cal.App.2d 445, 450, 452.) Gardyn does not contend that the regulation of card gaming businesses is preempted by state law. Moreover, even if chapter 5.04 were enacted solely for the purpose of raising revenue, the city retains authority to revoke the license of a business operating in an illegal or dangerous manner. A city is not without recourse where a licensed business is creating a public nuisance. (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80 [“[I]t is

² All further statutory references are to the Benicia Municipal Code unless otherwise noted.

an accepted rule of law (and one with which petitioners may be deemed familiar) that a business permit may be revoked by a municipality if the permittee either fails to comply with the conditions expressed in its permit *or* if there exist[s] a compelling public necessity justifying revocation, as where the conduct of that business constitutes a public nuisance”]; *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 757-758 [“A municipality retains the right to abate nuisances and enforce its criminal laws even in the face of grandfather rights. No business—not even an alcoholic beverage sales establishment regulated by state law—has a vested right to conduct its business in a manner that attracts public nuisances and encourages criminal activities near its premises”].)

Likewise, the city had the authority to revoke Gardyn’s license in 2002 based on illegal conduct that occurred in late 2001. Gardyn argues, “When the Finance Director suspended and revoked [Gardyn’s] casino license based on activities taking place in 2001, his authority, if any, was limited to suspending or revoking [Gardyn’s] 2001 business license. Since the Finance Director commenced the process in 2002, there was no business license to revoke. It had already expired.” Chapter 5.04 provides for a single license that is renewable each year (§ 5.04.170), not separate licenses that are issued anew each year. Nothing in section 5.04.280 limits the city’s ability to revoke a business license based on illegal activity occurring within a particular time period. Gardyn’s suggestion that illegal activity taking place in 2001 cannot be used to revoke the license after the renewal of the license is completely unfounded. (See *Payne v. Real Estate Commissioner* (1949) 93 Cal.App.2d 532, 535-536 [“ ‘Petitioner’s position would lead to an anomalous situation: The accusation proceedings had been noticed at the hearing of which it is proposed to show that petitioner was convicted of a felony, but in the meantime and before the hearing can be had, the time for a renewal of the license has arrived, and, hence, the charge not having been heard, the petitioner is entitled as a matter of right to the issuance of a renewal of his license. Even if the commissioner had refused to issue the license, he would have been entitled to an order of the court to that effect. The license itself is merely evidence of the right thereto. Thus, the commissioner had no

alternative but to issue the renewal. He could not order a revocation thereof without a hearing, and he could not refuse to issue a renewal until it had been determined that the licensee had violated some provision of the statute justifying such revocation.’ ”].)

Business owners who permit illegal activity to occur on their premises are not shielded from section 5.04.280 merely because the city cannot process the revocation within the calendar year in which the illegal activity occurs.³

Finally, while chapter 5.08 provides a separate scheme for summarily suspending a card room license, the city was not required to proceed under chapter 5.08 rather than under chapter 5.04. Contrary to Gardyn’s assertion, as applicable in this case the procedures for revoking a license issued under the two chapters are not significantly different. Section 5.04.280 gives the Financial Director the authority to revoke or suspend a business license granted under chapter 5.04 if the owner is “[c]onducting business in an illegal, improper or disorderly manner, or in a manner which endangers the public welfare.” Section 5.04.290, which sets forth the procedure for the revocation or suspension of a business license, provides in relevant part, “A. Authority of the Collector. The collector shall give the licensee written notice of the grounds for revocation or suspension. The notice shall specify a time and place of hearing, and shall be given at least five days before the time of the hearing. The licensee shall show cause why his license should not be revoked or suspended. [¶] B. Appeal to Council. The licensee may appeal the decision of the collector to the council.” Section 5.04.300 provides for the following procedures on appeal to the city council, “1. A person appealing a decision shall file written notice of the appeal with the city clerk within fifteen days after notice of the decision. The notice shall state the grounds relied upon for the appeal; [¶] 2. The city clerk shall cause the matter to be set for hearing before the city council within thirty days from the date of receipt of the notice of appeal, giving the

³ Gardyn also argues that unlike chapter 5.08, “Chapter 5.04 does not authorize the city to refuse to issue a new license, even though the city may have revoked a previous license.” We need not reach this issue, however, because there is no evidence in the record that Gardyn has applied for a new license and been rejected.

appellant not less than ten days' notice in writing of the time and place of the hearing. [¶] B. The findings and determinations of the city council at the hearing are final and conclusive.”

Section 5.08.080, on the other hand, authorizes the chief of police or a majority of the city council to suspend or revoke a card room license “if it is determined, based upon a preponderance of the evidence, that the licensee or any employee or agent of such licensee or permittee has: [¶] (1) Failed to comply with any of the provisions of this chapter” Section 5.08.250 prohibits licensees from knowingly engaging in or knowingly permitting any other person on such premises to engage in any act in violation of the laws of the State of California. Section 5.08.080, subsection (b), permits the chief of police to “immediately suspend or revoke a card room license or a work permit upon determining that any of the grounds listed in subsection (a) exist. The Chief of Police shall give written notice to the licensee/permittee that the license/permit has been revoked and that the licensee/permittee may appeal that decision to the City Council by filing a written appeal with the City Clerk within ten (10) days of the date of the notice.” Section 5.08.090 sets forth the procedures for hearing before the city council: “(a) The City Council may, by majority vote, suspend or revoke any card room license or work permit after a hearing pursuant to an appeal filed under section 5.08.080 [¶] . . . [¶] (c) At any hearing under this section, the licensee/permittee may appear, either in person or by counsel, or both in person and by counsel and may produce and submit any relevant evidence such licensee/permittee may desire, oral or documentary, [¶] (d) Should the City Council exercise the authority granted to it [under this section] and suspend or revoke the license/permit of any card room or card room employee, the City Manager shall notify in writing the licensee/permittee as to the action taken. . . . The decision of the City Council shall be final.”

Here, the illegal drug activities taking place at the casino relied on by the city to revoke Gardyn’s business license under section 5.04.280 also provided grounds for revoking the card room license under section 5.08.080. Likewise, the procedure used by the city to revoke the business license, including its summary suspension and a full

hearing before the city council, are the same steps that would have been followed to revoke the card room license under sections 5.08.080 and 5.08.090. Accordingly, while the city was not required to proceed under chapter 5.08, there is no reason to believe the outcome would have been different if it had elected to do so.

2. *Gardyn was afforded sufficient notice of the charges against him and a full and adequate hearing before an impartial body.*

“[D]ue process of law requires an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked.” (*Stewart v. County of San Mateo* (1966) 246 Cal.App.2d 273, 285.) Gardyn contends that the proceedings violated his due process rights because (1) he was not given sufficient notice of the allegations against him or provided with the supporting documentation necessary to prepare his defense; (2) the city attorney acted as an advisor to Nadritch and to the city council; (3) the city council permitted the finance director to put on his case after Gardyn’s case and limited Gardyn’s ability to cross-examine the witnesses against him; (4) the city council opened the hearing for public comment and denied him an opportunity to respond to derogatory comments by members of the public; and (5) the city council relied on incompetent hearsay.⁴

On January 4, 2002, Nadritch summarily suspended Gardyn’s business license under section 5.04.280 without a hearing. While procedural due process ordinarily requires notice and a hearing prior to the suspension of a business license, summary suspension with subsequent quasi-judicial review does not violate due process if “the action is justified by a compelling public interest.” (*Stewart v. County of San Mateo, supra*, 246 Cal.App.2d at p. 286.) A compelling public interest requires a finding of

⁴ Although his arguments overlap considerably, some of Gardyn’s arguments are directed solely at the fairness of the hearings before Nadritch. Gardyn contends that the proceedings before Nadritch violated his due process rights because Nadritch was not impartial, witnesses were not called, and Nadritch relied on evidence not discussed at the hearing in reaching his decision. We need not reach the merits of these arguments, however, because Gardyn was afforded a de novo hearing before the city council. Because we conclude that the city council hearing afforded Gardyn the requisite due process, any error arising out of the prior hearings is harmless.

“ ‘(1) urgency of immediate action, and (2) protection of the public from injury.’ ” (*Id.* at p. 287.) Examples of such compelling public necessities include summary suspension of a driver’s license upon an individual’s arrest for drunk driving (*Hough v. McCarthy* (1960) 54 Cal.2d 273), summary suspension of a license to operate a residential care facility for the elderly upon allegations of abuse (*Habrun v. Department of Social Services* (1983) 145 Cal.App.3d 318, 321-322), and summary suspension of a security broker’s license upon a showing that his business practices are unfair or that the broker is about to engage in fraudulent sales (*Halsey, Stuart & Co. v. Public Service Commission* (Wis. 1933) 248 N.W. 458, 461). The city argues that summary suspension was necessary here because illegal drug use at the casino posed a compelling threat to public safety. As the cases just cited indicate, for such a reason the city was entitled to require the business to close pending a further hearing. (See *New Safari Lounge, Inc. v. City of Colorado Springs* (Colo. 1977) 567 P.2d 372, 374, 377 [summary suspension of liquor license based on allegations that owner had staged illegal nude entertainment at the premise did not violate due process because alleged violations constituted immediate hazard to public safety and welfare].)

The notice provided by the city over the course of the proceedings adequately advised Gardyn of the allegations of illegal conduct and enabled him to prepare and present a defense at the city council hearing. The first notice sent to Gardyn advised him that the city had concluded that the casino was not operating in accordance with section 5.04.280, and states further, “It has come to my attention that a number of employees associated with the Sundowner Card Casino and you have been arrested for various violations of the law, including drug related offenses. The drug related offenses included illegal activity taking place on the grounds of the Sundowner Card Casino. Employees involved include Kerry Steven Reed, Genaro Antonio Figuero and yourself. Clearly, these activities are (1) in violation of state law, (2) indications that the business is not being conducted in an orderly and business-like manner, and (3) evidence that the business is being conducted in an illegal manner and in a way that endangers public welfare. [¶] I am therefore suspending your business license for the Sundowner Card

Casino effective immediately and proposing to revoke your business license. I will hold a hearing on this matter on January 15, 2002 at 9:00 am. At the hearing you may show cause as to why your business license should not be suspended and revoked.” A supplemental notice sent to Gardyn included a list of the alleged criminal activities at the premises on which Nadritch was relying. The list contained the date of each incident, a limited description of the incident, and the police department case number. Nine incidents of the sale or attempted sale of controlled substances are detailed on the list. The notice also indicated that the applicable police reports would be forwarded under separate cover, which they were. Thus, prior to the city council hearing, Gardyn had received two written summaries of the evidence against him as well as the reports prepared by the Benicia Police Department and the Department of Justice. Nonetheless, Gardyn argues that the notice was inadequate because the police reports were improperly redacted. While some of the redactions in the police report were perhaps unnecessary, the reports contained all of the significant details of the incidents listed in the supplemental notice. The names of the officers and suspects that were redacted from the police reports were supplied to Gardyn in Nadritch’s written summaries and in the Department of Justice reports. Because all of the information that was redacted from the reports was provided in the other documents, the redactions did not undermine Gardyn’s ability to “refute, test, and explain” the conduct alleged in the reports.⁵ The combined notices sufficiently advised Gardyn of the charges against him so that he was able to prepare “a full and detailed defense” at hearing before the city council. (*Yanke v. State Dept. Public Health* (1958) 162 Cal.App.2d 600, 603; see also Gov. Code, § 11503 [“A hearing to determine whether a right, authority, license or privilege should be revoked,

⁵ Contrary to Gardyn’s assertion, it does not appear that the city withheld any reports on which it relied in making its decision. Although Sergeant Hartig states in his summary report of the police investigation that “there were a total of twenty (20) investigative reports written specifically dealing with drug sales, attempted sales, or usage at the Sundowner Bar & Grill or Sundowner Cardroom during this three-month investigation,” Nadritch indicated in his report to the city council that he was relying on the nine incidents detailed in the supplemental notice, for which police reports were produced.

suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules”].)

Gardyn was afforded a hearing before impartial decision makers. In *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, the court reversed the denial of a petition for writ of mandate filed by an employee challenging the termination of his employment. The court held that the employee’s due process rights were violated because the assistant city attorney prosecuting the administrative case against the employee concurrently represented and advised the personnel board in other civil actions. (*Id.* at p. 813.) The court recognized that “in the context of administrative law, there is no absolute prohibition against the city attorney’s office representing both the Board and other city agencies such as the police department. Provided certain guidelines are met, the city attorney’s office may ‘act[] as an advocate for one party in a contested hearing while at the same time serving as the legal adviser for the decision maker.’ [Citation.] But, ‘[p]erformance of both roles . . . is appropriate only if there are assurances that the adviser for the decision maker is screened from any inappropriate contact with the advocate.’ ” (*Id.* at p. 813.) The court there found that the city had failed to meet this standard because even though the same attorney did not act as both a legal advisor to the board and as the prosecutor in the employee’s case, the prosecuting attorney’s “other interactions with the Board give the appearance of bias and unfairness and suggest the probability of his influence on the Board.” (*Id.* at p. 814.)

In the present case, the city took steps to address the due process concerns addressed in *Quintero*. The city attorney, acknowledging that she had advised Nadritch throughout the proceedings, arranged for independent counsel to advise the city council at the hearing. Moreover, at the request of Gardyn’s attorney, each city council member stated for the record any prior discussions they may have had with the city attorney

regarding this case, of which there were very few. At the conclusion of his statement, the Mayor asked Gardyn's attorney, "In terms of the comments that you heard here, we'd like to know that you are in fact comfortable that there haven't been any ex parte conversations that would in any way influence us, and that it is your belief based upon what we have provided to you tonight that you feel that this group is impartial." The attorney responded, "The answer to that, Mayor, is that to the extent I believe I appreciate the comments that you've made, I am comfortable. [¶] . . . [¶] So I thank you for the Council's responses. I appreciate them. And we will proceed." Accordingly, in light of the steps taken to eliminate any bias, either actual or apparent, and Gardyn's acquiescence through his attorney, there is no basis for his argument now that he was denied a hearing before an impartial body.

The procedures followed by the city council at the hearing also satisfied the demands of due process. While there was initially some discussion regarding who should go first, and whether the hearing should be considered an appeal or a de novo proceeding, ultimately it was decided that the city would go first, and the city council was advised that its "job will be to hear the evidence as a quasi-judicial body . . . and to then make decisions about what is the evidence that's been presented to you and how it comports with our ordinances relative to the revocation of the business license. [¶] . . . [Y]ou're in effect hearing what the appellant's attorney has to say, what any rebuttal is and so forth. And based on that and the evidence that's been presented to you, you make then a conclusion after the hearing's been closed." Accordingly, the council held a de novo hearing in which it independently received and weighed the evidence.

Although somewhat informal, the sequence in which evidence was presented did not violate Gardyn's rights. Nadritch went first and briefly summarized the report he had prepared for the council prior to the meeting. Then Gardyn testified in his defense. Following Gardyn's testimony, Gardyn's attorney questioned Nadritch and made some concluding remarks. Thereafter, Nadritch requested additional time for rebuttal and called a number of additional witnesses. Sergeant Hartig, Agent Tanaka, and Agent Miriani all answered questions posed by Nadritch and the members of the city council.

Gardyn's attorney was given an opportunity to cross-examine each of the witnesses. Contrary to Gardyn's argument, strict time limits were not placed on his cross-examination. In fact, the mayor emphasized, "[I]t's your turn now. And obviously we won't hold you to five minutes. Please, in keeping with our procedures, present any additional information that you wish to present to us." Accordingly, although the city council permitted Nadritch to offer fairly expansive rebuttal testimony, Gardyn was provided ample opportunity to cross-examine those witnesses, and he made no request to call any additional witnesses.

Next, Gardyn argues that his due process rights were violated by the public comment period permitted by the city council prior to the close of the hearing. Following the testimony, the hearing was opened for public comment. Three members of the public spoke against Gardyn and one spoke in support of him. Gardyn takes specific exception to the statements of a speaker who said that she had heard that nude mud wrestling took place at the bar and casino and that there had been pipe bombs, shootings and drug use in the parking lot. Gardyn, however, did not ask to respond following these comments. Instead, he remained silent when following the public comment period, the mayor asked whether anyone else wished to address the council. Gardyn's failure to object to the public comment portion of the hearing and to request an opportunity to respond to comments waive any claim on appeal that he was prejudiced by this portion of the proceedings. In any event, the comments, although derogatory, were vague. In light of the other far more substantial and specific evidence of illegal activity, there is no basis to suppose the city council relied on these comments in reaching its decision to revoke Gardyn's license.⁶ Accordingly, any potential error in this respect was not prejudicial.

⁶ In this respect, *Clark v. City of Hermosa* (1996) 48 Cal.App.4th 1152, relied on by Gardyn, is distinguishable. In *Clark*, the court held that the city committed procedural error in denying a building permit. The court stated in full: "The Council's concerns about excessive lot coverage and insufficient open space were raised for the first time *after* the public portion of the March 24, 1992, hearing was over. The Clarks were not permitted to adequately address the Council on those subjects, and their request to reopen the hearing was denied. Accordingly, the Clarks did not receive proper notice or an opportunity to be heard on those two issues, both of which were

Finally, the city did not rely on inadmissible evidence in support of its decision. The police reports relied upon by the city council as evidence of the illegal activity taking place on the premises were not inadmissible. Gardyn acknowledges that hearsay may be admitted in administrative hearings as long as its use is limited to supplementing or explaining direct evidence. (*Walker v. City of San Gabriel* (1942) 20 Cal.2d 879, overruled on different ground in *Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 37, 44; Gov. Code § 11513.) Here, Sergeant Hartig testified as the supervising officer regarding the police investigation of the casino and as the author of the police reports, and Agent Miriani testified as the percipient witness to many of the incidents. Agent Tanaka also testified regarding the Department of Justice reports and regarding his experiences at the casino as the primary investigating officer for that department. Accordingly, the hearsay reports were admissible because they supplemented the officers' live testimony.

Likewise, the city reasonably relied on evidence of illegal activity that took place in both the casino and the attached bar. The trial court did not make any express finding regarding the physical relationship between the casino and the bar and whether the layout was such that illegal acts occurring in the bar could be attributed to the casino. Nonetheless, substantial evidence supports the implied finding that the two business were physically interconnected despite their separate business licenses. Although many of the actual drug transactions took place in the restroom in the bar, some were initiated in the casino and one of the primary alleged suspects was a card room dealer. Agent Tanaka reported that he observed the dealer attempting to facilitate a drug sale from the casino. There is also evidence that on one occasion Agent Miriani approached someone in the bar and attempted to buy drugs. Miriani was told that the female card dealer had the drugs but because a game was in progress she was unable to break away and make the sale.

resolved against them and were cited by the Council as grounds for denying the permits.” (*Id.* at p. 1172.) Here, Hewitt’s statements were not cited as a basis for the city council’s decision, and it is clear that the city council did not rely on them. They raised no substantial new issues demanding additional notice and an opportunity to respond.

Accordingly, the evidence of illegal conduct at the bar was relevant to the proceedings to revoke the casino business license.

3. *The penalty imposed by the city council was not an abuse of discretion.*

Gardyn contends that in revoking the casino's business license the city council abused its discretion because there was insufficient evidence of illegal activity taking place at the casino, rather than at the bar, and because the city failed to consider less stringent forms of punishment. The propriety of the penalty imposed is vested in the discretion of the city council, and its determination may not be disturbed unless there is a clear abuse of discretion. (*Harris v. Alcoholic Bev. etc. Appeals Bd.* (1965) 62 Cal.2d 589, 594; *Schmitt v. City of Rialto* (1985) 164 Cal.App.3d 494, 501.) "If reasonable minds might differ as to the propriety of the penalty imposed, this fact serves to fortify the conclusion that the [city council] acted within the area of its discretion." (*Harris v. Alcoholic Bev. etc. Appeals Bd.*, *supra*, at p. 594.)

As discussed above, there is substantial evidence in the record of illegal activity at both the bar and casino. The evidence also showed that Gardyn was at the casino often and that he specifically organized late night pool games for "tweakers" or methamphetamine users. While Gardyn asserted adamantly that he was unaware of the illegal conduct and would have remedied the situation if given the chance, in light of the totality of the evidence, we cannot say that the city council's decision was unreasonable.

Disposition

The judgment denying Gardyn's writ petition is affirmed. The City of Benicia is to recover its costs on appeal.

Pollak, J.

We concur:

McGuiness, P. J.

Parrilli, J.